



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 17th day of June, 2003

Fitness Determination of

**COOL TOURS, INC.
d/b/a SAN JUAN AVIATION**

as a commuter air carrier under section
49 U.S.C. 41738

Served: June 20, 2003

Docket OST-02-13937

**ORDER TO SHOW CAUSE
PROPOSING ISSUANCE OF COMMUTER AIR CARRIER AUTHORITY**

Summary

By this order, we tentatively find that Cool Tours, Inc. d/b/a San Juan Aviation (Cool Tours) is a citizen of the United States and is fit, willing, and able to conduct scheduled passenger operations as a commuter air carrier, subject to conditions.

Background

Section 41738 of Title 49 of the United States Code ("the Transportation Code") and section 298.21(d) of the Department's Aviation Economic Regulations (14 CFR 298.21(d)) direct us to determine whether companies proposing to provide scheduled passenger service as commuter air carriers are "fit, willing, and able to perform the service," and to ensure that all operations relating to this service conform to the safety standards established by the Federal Aviation Administration (FAA). In making fitness findings, the Department uses a three-part test that reconciles the Airline Deregulation Act's liberal entry policy with Congress' concern for operational safety and consumer protection. The three areas of inquiry that must be addressed in order to determine a carrier's fitness are whether the applicant: (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) has sufficient financial resources to commence the operations proposed without posing an undue risk to consumers or their funds, and (3) will comply with the Transportation Code and regulations imposed by federal and state agencies. We must also determine that the applicant is a U.S. citizen.

On November 25, 2002, Cool Tours filed an application in Docket OST-02-13937 for authority to provide scheduled passenger operations as a commuter air carrier pursuant to section 41738 of the Transportation Code. Cool Tours accompanied its application with the fitness information required by section 204.3 of our regulations.¹

¹ Cool Tours filed information supplementing its application on January 24, April 1, 8, 15, and May 16, 2003.

No answers were filed to the application and no other issues regarding the applicant have come to our attention. Under these circumstances, we propose to decide the issue of the applicant's fitness on the basis of the written record. Upon review of the information in the application and the safety and compliance information on the carrier received from the FAA, we tentatively conclude that Cool Tours is a U.S. citizen and has met the fitness test to conduct commuter operations, subject to conditions. We will, however, give interested parties an opportunity to show cause why we should not adopt as final our tentative determination that Cool Tours is fit, willing, and able to provide scheduled passenger operations as a commuter air carrier.

FITNESS

The Company

Cool Tours was organized under the laws of the Commonwealth of Puerto Rico on January 30, 2001, and issued an FAA Air Carrier Certificate in November 2001 to provide Part 135 on-demand passenger operations. Since then, the carrier has conducted its operations from San Juan, providing a variety of on-demand services to points in the Caribbean. At the present time, Cool Tours employs 6 full-time employees and conducts operations with two 9-seat Beech 100 aircraft. All of Cool Tours' outstanding stock is owned by Mr. Ivan Figueroa, the carrier's President and founder and a U.S. citizen.

If found fit, Cool Tours proposes to operate five roundtrips per week between San Juan and St. Thomas. The airline plans to conduct its initial commuter operations with its two Beech 100 aircraft.

Managerial Competence

Mr. Ivan Figueroa, an FAA Airline Transport Pilot with over 7,000 hours of flight time, founded Cool Tours in January 2001, at which time he became Cool Tours' President and Director of Operations. Prior to this, and beginning in 1988, he was employed as a pilot for a number of Caribbean region airlines including Flamenco Airways, Alas del Caribe, and Virgin Air. In addition, Mr. Figueroa has served as Director of Operations for CaribAir, Isla Nena Air Service, and Air Carolina.

Mr. Herman Alvarez, an FAA certified Airframe and Powerplant Mechanic, is Cool Tours' Director of Maintenance. Since 1998, Mr. Alvarez has held a variety of positions with small aviation companies including Crew Chief with Airport Aviation Services (between 1998 and 1999); Director of Operations with City Wings (between 1999 and 2000); and Mechanic with Air Carolina (between 2000 and 2001). He joined Cool Tours as Director of Maintenance in late 2001.

Mr. Heriberto Maldonado, who was hired in April, 2003, is Cool Tours' Chief Pilot. He is an Airline Transport Pilot with over 9,300 hours of flight time. Prior to being hired by Cool Tours, Mr. Maldonado worked as a pilot for the Puerto Rico Department of Natural Resources for 4½ years. In addition, from 1984-1998, he was a pilot for a number of San Juan-based air carriers,

including Mountain Air Cargo, Four Star Air Cargo, Flamenco Airways², Crown Air, and Carib Air Cargo.

In view of the experience and background of the applicant's key personnel, we tentatively conclude that Cool Tours possesses a management team that has the managerial skills and technical ability to conduct the limited commuter operations proposed. Moreover, the FAA has advised us that the carrier's key technical personnel are acceptable to it.³

Operating Proposal and Financial Condition

If granted the commuter authority it seeks, Cool Tours proposes to operate ten scheduled weekly flights between San Juan and St. Thomas, utilizing the carrier's two 9-seat Beech 100 aircraft. The carrier expects to offer scheduled service to additional markets throughout the Caribbean region in the future.

Since its inception in January 2001, Cool Tours' on-demand air taxi operations have achieved mixed results. The carrier has supplied historical financial information indicating that it posted a loss of \$27,359 on charter revenues of \$256,907 for the 12 months ending July 31, 2002. In its latest financial statements, dated January 7, 2003, and covering the five months beginning August 1, 2002, Cool Tours reported net income of \$17,833 on revenues of \$117,407.

The company's balance sheet dated January 7, 2003, shows total current assets of \$54,891 and total current liabilities of \$116,806, resulting in a negative working capital balance of \$61,915. Stockholder's equity is reported as \$116,952 and retained earnings at \$603,595.

We note that the proposed commuter operations between San Juan and St. Thomas will be conducted in largely the same manner as the carrier's present on-demand service between the same points. Further, Cool Tours states that its current roster of employees and fleet of aircraft are sufficient to operate the proposed limited scheduled service and that its pre-operating costs, amounting to \$18,000, have already been paid.⁴ Cool Tours has forecast that the proposed scheduled operation will incur \$203,418 in expenses during the first year of commuter operations. We have reviewed Cool Tours' first year operating plan and expense forecast for its proposed scheduled operations, which are based on its current operations, and they appear to be reasonable.

In order to meet the Department's financial fitness criteria, an applicant should have access to financial resources sufficient to cover its pre-operating expenses and the expenses that are

² In addition to serving as a pilot for nine years with Flamenco Airways, Mr. Maldonado was the carrier's Director of Operations from November 1988 to February 1993.

³ The FAA evaluates certain of the carrier's key personnel with respect to the minimum qualifications for those positions as prescribed in the Federal Aviation Regulations. The FAA's evaluation of these key personnel provides an added practical and in-person test of their skills and technical ability.

⁴ Cool Tours stated that it has already met the FAA operating requirements for conducting scheduled operations and does not expect to incur any additional FAA pre-certification expenses. It also states that its current insurance coverage exceeds the Department's requirements for commuter air carriers and, as a result, it will not realize additional expense in meeting our insurance requirement.

reasonably projected to be incurred during three months of operations. Projected revenues may not be used to offset any of this amount. Further, because projected expenses during the first several months of operation frequently do not include all of the costs that will be incurred during a normal period of operations, it is our practice to base our three-month test on one quarter of the first year's operating cost forecast. In addition, if the applicant's most recent balance sheet shows a negative working capital balance, the amount of that deficit is considered a pre-operating expense in calculating the amount of funds that the applicant must have available to meet the financial fitness criteria. Thus, Cool Tours will need access to approximately \$113,000 to meet our fitness test, covering its negative working capital position of \$61,915 plus \$50,855, which is one quarter of its projected first year operating expense of \$203,418. As already noted, Cool Tours states that it has already paid its other pre-operating expenses.

Cool Tours has provided third-party verification of an available line-of-credit in the amount of \$250,000 from Electronic Manufacturing Services (EMS) of Mayaguez, Puerto Rico.⁵ In light of the foregoing, we tentatively conclude that Cool Tours will have access to financial resources sufficient to commence its proposed limited commuter service without posing an undue risk to consumers or their funds.

Compliance Disposition

We also tentatively conclude that Cool Tours has the proper regard for the laws, rules, and regulations governing its services to ensure that its aircraft and personnel will conform to applicable safety standards and that acceptable consumer relations practices will be followed.

Cool Tours has stated that there have been no charges of fraud, felony or antitrust violations, or of unfair, anticompetitive or deceptive business practices filed against it, its owner, or its key personnel. Nor are there any outstanding judgments or pending actions against any of these parties. Moreover, our search of the Department's records found no compliance problems involving Cool Tours, its owner, or its key personnel. Finally, the FAA has advised us that it has no objections to the Department's grant of Cool Tours' request for commuter authority.⁶

CITIZENSHIP

49 U.S.C. 41102 requires that authority to engage in air transportation be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). That section requires that the president and two-thirds of the Board of Directors and other managing officers be U.S. citizens and that at least 75 percent of the outstanding voting stock be owned by U.S. citizens. We have also interpreted the Transportation Code to mean that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

⁵ The applicant provided a balance sheet from EMS dated January 31, 2003, indicating that the company had adequate financial resources to honor this commitment.

⁶ In order to conduct the proposed commuter operations, Cool Tours must also obtain appropriate amendments to its operations specifications to authorize scheduled passenger service. The FAA indicates that this request is being processed and that there do not appear to be any matters of concern.

As previously stated, Cool Tours is a Puerto Rican corporation, and Mr. Ivan Figueroa, a U.S. citizen, owns 100 percent of the company's issued and outstanding stock. Further, all of Cool Tours' key personnel are identified as U.S. citizens and the company has provided an affidavit attesting that it is a citizen of the United States within the meaning of the Transportation Code and that it is actually controlled by U.S. citizens. Our review of the applicant has uncovered no reason to suggest that control of Cool Tours rests with non-U.S. citizens.

Based on the above, we tentatively conclude that Cool Tours is a citizen of the United States and is fit, willing, and able to provide the scheduled passenger service it proposes as a commuter air carrier, subject to conditions.

OBJECTIONS

We will give interested persons 14 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers to objections will be due within 7 days thereafter. We expect that persons objecting to our tentative findings and conclusions will support their objections with relevant and material facts. We will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will issue an order that will make final our tentative findings and conclusions with respect to Cool Tour's fitness and commuter authority.

EFFECTIVE COMMUTER AUTHORIZATION CONDITIONS AND LIMITATIONS

In the event that we find Cool Tours fit, willing, and able to conduct the proposed commuter service, we will issue to it a Commuter Air Carrier Authorization. However, that authorization will not become effective until the carrier has fulfilled all of the requirements for effectiveness as set forth in the Terms, Conditions, and Limitations attached to its authorization.⁷ Among other things, this includes our receipt of evidence that the carrier has been issued Operations Specifications by the FAA authorizing scheduled passenger service under Part 135 of the Federal Aviation Regulations.

Moreover, given the relatively limited scope of Cool Tours' proposed operations—one market with a single round trip flight five days per week using 9-seat aircraft, we have decided to limit any commuter authority issued to Cool Tours to the use of aircraft that can be operated under Part 135 (in effect, aircraft with not more than nine passenger seats). Our findings regarding the adequacy of Cool Tours' management and financial resources may not hold true if the company were to initiate operations using larger aircraft that would require certification from the FAA under Part 121. Thus, should Cool Tours propose to conduct such operations, it must first be determined fit to do so.⁸

⁷ We also reserve the right to stay the effectiveness of Cool Tours' authority if any new information becomes available to us that warrants such action.

⁸ We note that the operation of larger aircraft could require the carrier to have access to additional funds and/or to hire additional management personnel.

Furthermore, we remind Cool Tours of the requirements of 49 U.S.C. 41110(e). Specifically, that section requires that, once a carrier is found fit initially, it must remain fit in order to hold its authority. To be assured that commuter air carriers continue to be fit after effective authority has been issued to them, we require that they supply information describing any subsequent substantial changes they may undergo in areas affecting fitness. In this regard, should Cool Tours propose any substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.⁹ The compliance of the company with these requirements is essential if we are to carry out our responsibilities under the Transportation Code.¹⁰

ACCORDINGLY:

1. We direct all interested persons to show cause why we should not issue an order finding that Cool Tours, Inc. d/b/a San Juan Aviation is fit, willing, and able under 49 U.S.C. 41738 to provide scheduled passenger service as a commuter air carrier using small aircraft pursuant to Part 135 of the Federal Aviation Regulations.
2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or the award of authority set forth here to file them with Department of Transportation Dockets, 400 Seventh Street, SW, Room PL-401, Washington, D.C. 20590, in Docket OST-02-13937, and serve them upon all persons listed in Attachment A no later than 14 days after the service date of this order; answers to objections shall be filed no later than 7 days thereafter.
3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.¹¹
4. In the event that no objections are filed, we will consider all further procedural steps to be waived, and we will enter an order making final our tentative findings and conclusions set out

⁹ The carrier may contact our Air Carrier Fitness Division to report proposed substantial changes in its operations, ownership, or management, and to determine what additional information, if any, will be required under section 204.5. Moreover, by notice dated July 21, 1998, the Department requested air carriers to provide a 30-day advance notification of any proposed change in ownership, restructuring, or recapitalization. If the carrier fails to file the information or if the information fails to demonstrate that the carrier will continue to be fit upon implementation of the substantial change, the Department may take such action as is appropriate, including enforcement action or steps to modify, suspend, or revoke the carrier's commuter authority.

¹⁰ We also remind Cool Tours about the requirements of section 204.7 of our rules. This section provides, among other things, that (1) the commuter authority granted to a company shall be revoked if the company does not commence actual flying operations under that authority within one year of the date of the Department's determination of its fitness; (2) if the company commences operations for which it was found fit and subsequently ceases such operations, it may not resume commuter operations unless its fitness has been redetermined; and (3) if the company does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

¹¹ Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

here and awarding Cool Tours, Inc. d/b/a San Juan Aviation a Commuter Air Carrier Authorization, subject to the attached specimen Terms, Conditions, and Limitations.

5. We will serve a copy of this order on the persons listed in Attachment A.
6. We will publish a summary of this order in the Federal Register.

By:

MICHAEL W. REYNOLDS
Acting Assistant Secretary
for Aviation and International Affairs

*An electronic version of this document is available on the World Wide Web at
<http://dms.dot.gov>*



Specimen
Terms, Conditions, and Limitations

COOL TOURS, INC.
d/b/a SAN JUAN AVIATION

is authorized to engage in scheduled passenger air transportation operations as a commuter air carrier.

This authority is subject to the following provisions:

(1) The authority to conduct scheduled passenger operations will not become effective until six (business) days after the Department has received the following documents; provided, however, that the Department may stay the effectiveness of this authority at any time prior to that date:

(a) A copy of the holder's Air Carrier Certificate and Operations Specifications authorizing such operations from the Federal Aviation Administration (FAA).

(b) A certificate of insurance on OST Form 6410 evidencing liability insurance coverage meeting the requirements of 14 CFR 205.5(b) for all of its aircraft.

(c) A statement of any changes the holder has undergone in its ownership, key personnel, operating plans, financial posture, or compliance history, since the date of the Show Cause Order in this case.

(d) A revised list of pre-operating expenses already paid and those remaining to be paid, as well as independent verification that the holder has available to it funds sufficient to cover any remaining pre-operating expenses and to provide a working capital reserve equal to the operating costs that would be incurred in three months of operations.

(2) Pending receipt of effective authority, the holder may not accept payment of any kind (i.e., cash, check, or credit card) or issue tickets for scheduled passenger operations and any advertisement or listing of such flights by the holder must prominently state: "This service is subject to receipt of government operating authority."

(3) The holder shall at all times conduct its operations in accordance with the requirements of 14 CFR Part 298 and any other regulations prescribed by the Department of Transportation for the services authorized here, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.

(4) The holder's authority is limited to operations conducted pursuant to Part 135 of the Federal Aviation Regulations. In the event that the holder wishes to institute operations that would require Part 121 certification from the FAA, it must first be determined fit for such operations.

(5) *The holder's authority is effective only to the extent that such operations are also authorized by the FAA, and comply with all Department of Transportation and Department of Homeland Security requirements concerning security.*

(6) *The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).*

(7) *The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render this authority ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this authority.*

(8) *The holder shall maintain in effect at all times with the Department of Transportation current information on OST Registration Form 4507.*

(9) *In the event that the holder receives effective scheduled passenger authority, the following additional conditions will apply:*

(a) The holder may reduce or terminate service at any point or between any two points, subject to compliance with the provisions of 49 U.S.C. 41734 and all orders and regulations issued by the Department of Transportation under that section.

(b) The holder may not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, except within the limits set forth in section 29 of the International Air Transportation Competition Act of 1979, as amended by section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998.

(10) *Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(l)), it must first comply with the requirements of 14 CFR 204.5.*

(11) *In the event that the holder does not commence actual flying operations as a commuter air carrier under this authority within one year of the date of the Department's determination of its fitness, its commuter authority shall be revoked for dormancy. Further, in the event that the holder commences but subsequently ceases all scheduled passenger operations, the authority granted here shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume such operations within one year of its cessation, its commuter authority shall be revoked for dormancy.*

ATTACHMENT A

SERVICE LIST FOR COOL TOURS, INC.

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